

John A. Mueller
LIPPES MATHIAS WEXLER FRIEDMAN LLP
50 Fountain Plaza, Suite 1700
Buffalo, New York 14202-2216
(716) 362-7614
jmueller@lippes.com

· *Counsel to the Foreign Representative*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:

CHAPTER 15

MINERA TRES VALLES S.P.A.,¹

CASE No. 20-____-____

DEBTOR IN A FOREIGN PROCEEDING.

**DECLARATION OF FOREIGN DEBTOR IN SUPPORT OF
(I) VERIFIED PETITION FOR RECOGNITION OF FOREIGN MAIN PROCEEDING
AND (II) REQUEST FOR PROVISIONAL RELIEF
UNDER CHAPTER 15 OF THE BANKRUPTCY CODE**

I, Luis Vega Munoz, to the best of my information and belief, state as follows:

1. I am the CEO of the above-captioned debtor, Minera Tres Valles S.p.A. (“Foreign Debtor” of the “Company”), which is subject to a Bankruptcy Procedure of Judicial Reorganization currently pending before the 30° Civil Court of Santiago, Chile, and assigned Case No. C-7373-2020 (“Chilean Proceeding”).

2. I submit this declaration in support of: (i) Official Form 401 - Chapter 15 Petition for the Debtor; and (ii) *(I) Verified Petition for Recognition of Foreign Main Proceeding and (II) Request for Provisional Relief Under Chapter 15 of the Bankruptcy Code.*

¹ The Foreign Debtor’s Chilean tax identification number is 77.856.200-6 and its executive office is located at Avenida Apoquindo 4775, Oficina 501, Las Condes, Santiago, Chile 758009.

I. PRELIMINARY STATEMENT

3. The Foreign Debtor's primary business is to produce and sell copper cathodes. As a result, the Foreign Debtor's financial position depends on the prevailing global prices for copper cathodes. The Foreign Debtor has entered into an offtake agreement (the "Offtake") with Anglo American Marketing Limited ("AAM Ltd.") to sell 100% of all copper cathodes produced. This represents over 95% of the Company's revenue. In line with the overall copper industry, China represents the largest consumer of copper cathodes.

4. Same as many other industries around the world, the Foreign Debtor's business has suffered greatly due to the COVID-19 pandemic. On March 23, 2020, the Chilean government declared a state of catastrophe and local officials in Salamanca formally requested that MTV temporarily halt or restrict operations as a measure to slow down the spread of the virus.

5. Concurrent with the steep decline in Chinese demand resulting from COVID-19, and corresponding reductions in global copper prices, Chile's social unrest that began in October 2019 has continued in the background affecting the availability of short-term working capital loans that many of MTV's suppliers rely on for day-to-day and month-to-month cash flows (the "Social Unrest Effect"). As a result, many of MTV's suppliers experienced working capital challenges and insisted that the Company move to accelerated payment terms, further exacerbating its precarious financial position.

6. Before the pandemic, the Foreign Debtor was already facing significant operational and financial difficulties due to the ongoing "mega drought" in Chile, which has been ongoing for over ten (10) years² together with the continuing Social Unrest Effect. In particular, the Foreign Debtor's operations are located in Region IV of Chile, which is now part of a

² See <https://dialogochino.net/en/climate-energy/30820-chiles-mega-drought-rolls-on/>

designated “agricultural emergency zone.”³ The Company’s operations require a significant amount of water to produce copper cathodes. The Choapa River, from which the majority of the Company’s water is drawn, was operating at 15% of its historical flow rates (and as low as 6%) for the majority of January through May.

7. The confluence of all these financial and environmental difficulties drastically reduced the Foreign Debtor’s revenues and undermined its ability to pay debts in the ordinary course of business. As a result, on May 12, 2020, the Foreign Debtor filed an application to open a reorganization proceeding with the 30° Civil Court of Santiago, Chile. On May 29, 2020, the Civil Court issued the Resolution of Reorganization that formally commenced the Chilean Proceeding and an initial stay period of thirty (30) business days (“Stay Order”). A true and accurate copy of the Stay Order, with a certified English translation, is attached to the Petition as *Exhibit C*.⁴

8. While the Foreign Debtor’s operations are exclusively in Chile, it maintains certain bank accounts in the U.S. The Foreign Debtor is commencing this Chapter 15 case for the limited purpose of protecting those U.S. Accounts (as defined below) and all funds contained therein; thus, avoiding any disruption to either its operations or the Chilean Proceeding. Under the Offtake, these U.S. Accounts are used solely for the purpose of receiving 100% of the revenue received from the Offtake before being available for distribution to the Company’s Chilean-domiciled bank accounts.

³ *Id.*

⁴ On June 19, 2020, the Stay Order was extended until August 11, 2020.

II. BACKGROUND

A. Business Summary

9. The Foreign Debtor is a fully permitted and operating mining complex located near Salamanca in Region IV of Chile. The mine commenced commercial production in 2010 and consists of two (2) main deposits: (i) Papomono – underground; and (ii) Don Gabriel – open pit, along with several ancillary deposits.

10. In addition to mining its own ore, the Foreign Debtor purchases mineralized material from local miners and has a toll processing agreement with ENAMI, a Chilean state-owned enterprise that supports small and artisanal miners.

11. The Foreign Debtor has a crushing and processing plant with nameplate capacity of 6,000 tons per day. The plant is designed to produce up to 18,500 tons per annum of copper cathodes.

12. As of December 31, 2019, the Foreign Debtor employed a total of 273 employees, approximately 200 of whom are represented by the Tres Valles' Workers Union Association, and 417 contractors.

13. All of the Foreign Debtor's revenue stems from operations in Chile and some important items to note regarding its structure and daily business activities:

- (i) registered office and corporate headquarters are located at Avenida Apoquindo 4775, Oficina 501, Las Condes, Santiago, Chile;
- (ii) primary control and decision-making are made from the principal place of business in Chile;
- (iii) majority of employees reside in Chile;

- (iv) all assets are in Chile, with the exception of the U.S. Accounts; and
- (v) majority of administrative functions, including accounting, financial reporting, budgeting, and cash management, are conducted in Chile.

B. Status Of Operations

14. On March 23, 2020, local officials in Salamanca formally requested that MTV temporarily halt or restrict operations as a measure to slow down the spread of the virus. They also requested that MTV do so while continuing to remunerate the employee base, which was not financially possible for MTV.

15. MTV responded by temporarily halting the majority of all mining operations, significantly reducing the employee base required to maintain minimal operations, maintaining the necessary staff to operate and monitor the leach pad, maintaining the necessary staff to operate its solvent-extraction and electrowinning processing plant where its copper cathodes are produced and maintaining the necessary staff to conduct preventative maintenance of key equipment.

III. CAPITAL STRUCTURE

A. Secured Lenders

16. On January 26, 2017, the Foreign Debtor entered into a line of credit financing contract ("Credit Facility") with GAM Kimura Commodity Trade Finance Fund Limited ("Kimura") in the amount of \$9,500,000.⁵ In the third quarter of 2018, the Credit Facility was renewed and extended to \$15,000,000. At that time, Sprott Resource Holdings Inc., a company duly registered and incorporated in Canada ("SRHI"),⁶ became guarantor to the Credit Facility ("Credit Facility Guarantee"), replacing the Foreign Debtor's former majority shareholder. In

⁵ All monetary amounts are in USD.

⁶ On June 23, 2020, Sprott Resource Holdings Inc. formally changed its name to SRHI Inc.

September 2019, the Credit Facility was further renewed and extended to \$20,000,000, as was the Credit Facility Guarantee.

17. In 2017, SRHI purchased a 70% ownership in MTV after conducting significant due diligence on MTV's future mining potential. SRHI, together with MTV initiated several technical engineering studies to validate the due diligence and in late 2018 began marketing the project to find a debt partner to help finance MTV's proposed expansion. MTV, SRHI and the Senior Lenders (defined below) entered into the New Credit Facility (defined below) in December 2019.

18. In December 2019, the Foreign Debtor repaid the Credit Facility and the Credit Facility Guarantee expired upon the Foreign Debtor's entry into a credit facility with new lenders in the amount of \$45,000,000 ("New Credit Facility"): (i) AAM Ltd.; and (ii) Kimura (collectively "Secured Lenders"). SRHI serves as a limited guarantor under the New Credit Facility, with Citicorp International Limited serving as facility agent and security agent ("Agent").

B. Intercompany Lenders

19. The Foreign Debtor has also obtained financing from a group of intercompany and/or affiliated lenders: (i) SRHI; (ii) Sprott Resource Corp. ("SRC"), a company duly registered and incorporated in Canada – a wholly-owned subsidiary of SRHI;⁷ (iii) SRH Chile S.p.A. ("SRH Chile"), a company organized and existing under the laws of Chile – a wholly-owned subsidiary of SRC; and (iv) certain members of MTV's management (collectively, the "Intercompany Lenders").

20. Pursuant to an Intercreditor Agreement, dated December 10, 2019, the Foreign Debtor's obligations to the Intercompany Lenders are subordinate to those of the Secured Lenders.

⁷ On June 23, 2020, Sprott Resource Corp. formally changed its name to SRHI Resource Corp.

C. Trade Creditor Issues

21. As noted above, certain of the Foreign Debtor's trade creditors were requiring accelerated repayment terms, and in some cases cash on delivery ("COD"), prior to the pandemic-related shutdown and commencement of the Chilean Proceeding.

22. Some of these creditors have international operations, personnel and enforcement capabilities. As a result, the Foreign Debtor is very concerned by the current exposure of the U.S. Accounts:

- (i) The U.S. accounts are instrumental in, and critical to, the Foreign Debtor's operations; namely, 100% of all revenue pertaining to the Offtake flows through these accounts;
- (ii) An international creditor was successful in freezing all Chilean bank accounts of MTV, *and attempting to freeze the U.S. Accounts as well*, immediately prior to MTV entering protection (detailed below); and
- (iii) If/when some portion of the withdrawn funds (detailed below) are returned, it will be exposed to potential creditor action.

D. U.S. Bank Accounts

23. Immediately before MTV entered into creditor protection in Chile, an international creditor obtained a court order freezing all Chilean bank accounts of MTV. At the same time, the creditor attempted to execute against the U.S. Accounts, but was denied access by the Chilean banks. As a result, MTV's only operational accounts are the U.S. Accounts (defined below).

24. MTV expects to have its Chilean bank accounts reactivated, but MTV cannot risk having any further actions taken on its accounts, including the U.S. Accounts.

25. As part of the New Credit Facility, the Foreign Debtor was required to maintain a reserve account at the New York Branch of Citibank, N.A. (“Citibank”), with a minimum balance of \$7,000,000.

26. In accordance with this requirement and for other business purposes, the Foreign Debtor opened a pair of accounts with Citibank: (i) xxxx5500 – collection account; and (ii) xxxx5600 – operating account (collectively “U.S. Accounts”).

27. On May 12, 2020, pursuant to an Offshore Accounts Agreement, the Agent issued an ‘Account Stop Notice’ to Citibank restraining the Foreign Debtor’s U.S. Accounts. Shortly thereafter, in accordance with the terms of the New Credit Facility, the Secured Lenders withdrew \$6,500,000 from the Foreign Debtor’s U.S. Accounts.

28. Upon information and belief, the withdrawn funds are currently held in a suspense account at Citibank, for the benefit of the Secured Lenders. As part of the Chilean Proceeding, there are ongoing negotiations between the Foreign Debtor and Secured Lenders to have some portion of the withdrawn funds returned to the U.S. Accounts.

E. Equity Interests

29. The Foreign Debtor’s equity is held as follows: (i) 70% – SRH Chile; and (ii) 30% – Porto San Giorgio S.p.A., a company organized and existing under the laws of Chile (together, the “Shareholders”).

[Space Intentionally Left Blank – Signature Block on Next Page]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct to the best of my information and belief.

Executed on August 12, 2020
Santiago, Chile



Luis Vega Munoz
- CEO, Foreign Debtor